



AL-09-001-3813

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

SEP 30 2009

The Honorable John D. Rockefeller IV  
United States Senate  
Washington, DC 20510-4802

Dear Senator Rockefeller:

Thank you for your letter of September 10, 2009 to Administrator Lisa Jackson of the U.S. Environmental Protection Agency (EPA). The Administrator has requested that I respond on her behalf regarding EPA's September 3, 2009 letter to the U. S. Army Corps of Engineers, Huntington District. Our September 3, 2009 letter concerned the Corps' permit to the Mingo Logan Coal Company for its Spruce Number 1 Mine and, in particular, requested the District Engineer to use discretionary authority to suspend, revoke or modify the permit.

We certainly appreciate the concerns registered in your letter, including the fact that EPA asked the Corps for reconsideration after the permit had been issued by the Huntington District. As you point out, the project was considerably modified before the permit was issued. EPA's request for additional review stems from new information and circumstances that have evolved since issuance of the permit in January, 2007. This, in conjunction with the scale and scope of Spruce Number 1, prompted our office to request reconsideration. The project, as permitted, encompasses approximately 2,278 acres with six valley fills and associated sediment control structures. These will directly impact 10,630 linear feet of ephemeral stream channels, 32,491 linear feet of intermittent stream channels, 825 linear feet of perennial channels, and 0.12 acres of wetlands, within tributaries to Spruce Fork of the Little Coal River.

EPA's overriding concern is to ensure that coal mining is conducted in a manner that is fully consistent with the requirements of the Clean Water Act, the Surface Mining Control and Reclamation Act, the National Environmental Policy Act, and other applicable federal laws. The Clean Water Act Section 404(b)(1) Guidelines (230.10(b)(1)) state that "no discharge of dredged or fill material shall be permitted if it causes or contributes, after consideration of disposal site dilution and dispersion, to violation of any applicable State water quality standard." The guidelines further require consideration of impacts individually and cumulatively.

The recent data and analyses mentioned above now confirm our belief that cumulative downstream water quality impacts have not been adequately addressed by the permit, especially in light of evidence that effluent from valley fill sedimentation ponds will elevate conductivity and thus negatively affect healthy aquatic communities. The Little Coal River watershed

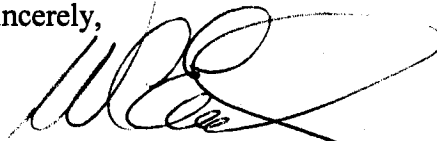


contains the largest number of currently impaired stream miles in the Central Appalachian Ecoregion in West Virginia. Compounding these existing stream impairments is the potential cumulative impact of 11 proposed mining projects in the Coal River Sub-Basin. In addition to the stream impact from Spruce Number 1, these projects would impact approximately 34 miles of stream channels.

In summary, given the potential impacts of present and future mining activities, EPA believes Spruce Number 1 needs to be reevaluated. Otherwise, there is significant potential for further degradation of downstream water quality and potential violations of West Virginia's water quality standards which may be irreversible.

I want to assure you that EPA continues to work closely with the Corps of Engineers as it considers our request. If you have any questions, please do not hesitate to contact me or have your staff contact Mrs. Jessica Greathouse, EPA's West Virginia Liaison, at 304-234-0275.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. C. Early', with a large, sweeping flourish extending from the end of the signature.

William C. Early  
Acting Regional Administrator

